1950. K File No. B.R.T.A Bijapur 50

Legal DEPARTMENT
A BRANCH

Examined DRP 5-5-52

Subject:— Appeals to the Bombay Revenue Tribunals from Bijapur.

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1:7

B-R-T-A-Bijapur | 50

675 P

CONTENTS.

B.R.T.A. Bijapur/50.

Legal Department File No.....

Sr. No.	R.I.No./On.	Subject	Pages.
1)	On. 18049 20-12-50.	Appeal before the B.R.T. filed by Shri G.K. Kulkarni	1-12.

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dt. 20-6-'56.

24/6

1 23

No. 18049
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 20th December 1950.

To

The Government Pleader,
High Court,
Bombay.

Subject: Appeal before the Bombay Revenue Tribunal filed by Shri Govind Krishna Kulkarni of Gindgi.

Sir,

With reference to the subject noted above, I have the honour to request you to direct the Assistant Government Pleader, High Court to appear before the Tribunal on the date of hearing and to argue the appeal on the lines of the accompanying Memorandum of Instructions. The date of hearing will be communicated to you when fixed.

The papers of the case, forwarded herewith for perusal of the Assistant Government Pleader, may be returned direct to the Revenue Department when no longer required.

Yours faithfully,

for subsequent pps. pl. see P 71 pvr.

Issued 20/12

Submitted for signature 19/12

o/c

for Remembrancer of Legal Affairs.

P.T.O.

Copy to:

The Revenue Department (with a copy of the Memorandum of Instructions).

Issued
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Submitted after issue.
File in B.R.T.A/Misfeasor/50 (Amb).

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B.R.T.A Bill

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MEMORANDUM OF INSTRUCTION:

The main facts appear to be these :- The appellant Shri Govind Krishna Kulkarni is the owner of Survey Nos. 3 and 139 of the village Bableshwar, Taluka Sandgi, district Bijapur. To the south of survey No. 139 there was a small nala flowing from east to west. The small nala joined a bigger nala on the western side. It seems that in course of time the small nala became silted and there was almost no flow of water through it. It became an abandoned bed of a stream. The appellant as the owner of the neighbouring land, Survey No. 139 thought that he was entitled to annex the land of the bed of the stream to his land in survey No. 139. The appellant therefore began to sow crops in the bed of the old stream and he also erected a small bund on the southern side of the stream to protect the field from erosion and also in order to provide a passage to the villagers, in lieu of a foot path which existed there from old times. Some of the villagers complained about the interference with the old foot path. But as a new path was available over the new bund the complaints from the villagers were not taken seriously.

However, later on, there were other complaints about encroachment by the appellant on Government land. In 1940 the District Inspector of Land Records surveyed the land and declared that it was an abandoned bed of a stream. The said land was given a new survey No., namely, survey No. 144. The area of the land was found to be one acre and three gunthas out of which eight gunthas were occupied by the new bund erected by the appellant.

Government then decided to dispose of this land by public auction. The first auction-sale was held on 31-8-1943, and the appellant's father himself was the highest bidder. But the Prant Officer set aside

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that sale on the ground that irregularities had occurred in the publication of the proclamation of sale. The second auction-sale was held on 12-12-1944. This time the appellant himself was the highest bidder. But the question whether the sale should be confirmed or not was pending for nearly 4 years; and ultimately the sale was set aside. In the meanwhile the appellant had paid the purchase price in full. That amount was returned to him. The appellant did not file any further appeal against the order refusing confirmation of the sale.

The third auction sale was held in the month of February 1949 by the Prant Officer. In that sale the present respondent who is the owner of Survey No. 138, situate to the south of the old nala, was declared the highest bidder. That sale was duly confirmed. The appellant approached the Collector in an appeal against the order of the Prant Officer confirming the sale. But the Collector summarily rejected the appeal. The appellant then filed the present appeal before the Revenue Tribunal.

The Commissioner, S. D. has expressed his opinion that the appeal may be dismissed as there is no substance in the same. His opinion is included in the papers. The non-official Member of the Tribunal however, took a different view, and recommended that the sale held in 1944 should be confirmed and that the present sale in favour of the respondent should be set aside.

The first question is whether the land in dispute can be called an "alluvial" accretion. Section 63 of the Land Revenue Code lays down that when it appears to the Collector that any alluvial land, which vests in the Crown, may, with due regard to the interest of the

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public revenue, be disposed of, he shall offer the same to the occupant, if any, of the bank or shore on which such alluvial land had been formed. The price of the land so offered shall not exceed three times the annual assessment thereof. If the said occupant refuses the offer, the Collector may dispose of the land without any restriction as to the price. In the present case it is not disputed that no offer was made to the appellant to obtain the land on payment of the price equivalent to three times the annual assessment. Section 64 of the Land Revenue Code provides that when alluvial land forms on a bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use thereof, unless the area of the same exceeds one acre. If the area exceeds one acre the land shall be at the disposal of the Collector, subject to the provisions of Section 63.

"Alluvion" means strictly gradual, slow, and imperceptible, accretion by deposit of fresh soil, by water, upon existing riparian land. (see 3 Bengal Law Reports, page 525). It has been held that new land left bare by a receding sea, or diverted river is not "alluvion", but it is dereliot land. In order that an accretion may be alluvial it must be slow, and gradual, and not caused by sudden alteration of the course of a river . (see Gupte's Land Revenue Code, 3rd edition, page 388). There is difference between alluvial land, and an abandoned bed of a stream. Beds of rivers or streams which are liable to be under water for short periods in the rain cannot be treated as alluvial land (see page 390 of Gupte's Land Revenue Code).

In the present case the disputed land was originally the bed of a stream. The bed was covered with silt and the water of the stream seems to have been diverted, thus leaving the old bed of the stream quite dry. Such

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land covering the bed of an old stream cannot be called an alluvial land. Hence neither Section 63, nor Section 64, could apply to the present case, and the Government would be free to dispose of the land by public auction.

It seems that the appellant's father was prepared to purchase the land for Rs. 60-0-0 which was the estimate of value made by the Panchas. He also was willing to pay the proper assessment for the new land. His statement to that effect was recorded before the Revenue Authorities. (see page 69 of file No. III). In view of this fact the question of holding an inquiry as to the ownership of the bed of the stream, does not arise. Under section 37 of the Land Revenue Code all beds of streams and rivers belong to the Government. It is not claimed by the appellant that the land formed by the dried up bed of the stream is a part of survey No. 139, or Survey No. 3, owned by the appellant. The appellant is in possession already of the full area of survey Nos. 139 and 3. There is therefore no question of encroachment, necessitating an inquiry under Section 37 of the Land Revenue Code. The bed of the stream comprises survey No.144 and it is quite a seperate and distinct land.

The present appellant had tried to annex the land, now comprising survey No. 144, to his land in survey No. 139. But after the District Inspector of Land Records had surveyed the land, and after the Government had decided to put it to auction, the present appellant and his father, did not claim the land by way of an alluvial accretion. On the other hand they offered bids for the purchase of the land on two occasions. Thus they admitted Government's title to the land.

The first two auction-sales have not been confirmed. The appellant did not file any appeal against the order

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by which the sale held in 1944 in his favour was not confirmed. It is now too late for him to contend that the sale held in 1944 should be confirmed. The order refusing to confirm the sale of 1944 has become final, and it cannot be reopened.

The only question therefore left for discussion is whether the appellant had shown any irregularity with respect to the present sale in which the respondent was declared to be the highest bidder. No irregularity of a serious nature has occurred in the procedure followed by the Prant Officer in the case of the present auction-sale. The appellant has alleged that the sale was adjourned to enable him to bring bidders; and that when he came to the place with some bidders he found that the sale was already completed in the name of the respondent. These allegations are not supported by any evidence, and therefore they cannot be accepted.

For these reasons it should be contended that the order passed by the Collector rejecting the appeal was proper.